

Where lands are divided in specie under the act of 1820, the commissioners have no power to assign the widow a portion of the land, *in fee*, equal to her dower in the whole, for this would be in effect making her a co-heir.

[The bill, in this case, was filed for a partition of the real estate of John Wilhelm, deceased, among his heirs at law. The heirs at law were ten in number, and the commissioners decided that the land was capable of advantageous division into ten parts, and divided the same accordingly, making several of the lots to contain less than fifty acres. To this return some of the parties excepted, for the reasons stated in the following opinion of the Chancellor, delivered on the 18th of May, 1849.]

THE CHANCELLOR:

The objections of the complainant to the return of the commissioners resolve themselves into two. *First*, it is objected that the commissioners have divided the estate into too many parts, to the injury of the complainant and Elcanor and Charlotte Wilhelm. *Secondly*, that they have assigned to two of the heirs at law, who are minors, nothing for their present support, the parts allotted to them being encumbered with the dower of the widow for life.

The first objection I do not think well taken. The judgment of the commissioners in regard to the susceptibility of the estate to be divided among all the heirs, though perhaps not absolutely conclusive, is certainly entitled to great respect, and in the absence of proof demonstrating error of judgment or partiality, or some other good reason for disregarding it, should not be disturbed. In the language of the 8th section of the act of 1820, ch. 191, "the commissioners, or a majority of them, shall *adjudge and determine* whether the estate will admit of being divided without loss and injury to all the parties entitled," "and if they shall so *adjudge and determine*, then they shall divide and make partition fairly and equally in value between all the parties interested, according to their several just proportions," &c. The commissioners, in this case, have decided that the estate may be divided among all the parties